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IPIB AO 2016-14

September 15, 2016

SUBJECT: Local Government Bodies Hiring Private Attorney

Kevin Kilgore
1695 115th Street
Diagonal, Iowa 50845

Dear Mr. Kilgore:

This opinion is in response to your email letter of August 26, 2016, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You are concerned with the statutory authority of local government entities to hire private attorneys and for contracts that pay attorneys a retainer. You are also concerned as to finding minutes that reflect hiring decisions.

QUESTION:

What is the statutory authority for a local government entity to hire a private attorney and payment is based on a retainer?

OPINION:

The question you raise is beyond the jurisdiction of IPIB to answer as it is not covered by Iowa Code chapters 21, 22, or 23. In your letter to us requesting this opinion, you cite a number of statutes in Iowa Code chapter 331. That chapter is not under our statutory jurisdiction to interpret.¹ As such, we are unable to issue you an opinion concerning what authority a local government entity has to hire a private attorney and to maintain that attorney on a retainer.

¹ See IPIB Advisory Opinions 2015-02, 2016-02, and 2016-10 all that were issued to you and spoke to IPIB's lack of statutory authority to interpret Iowa Code chapter 331.

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We do note that if a “governmental body” makes the decision to hire an attorney, that decision needs to be made at a public meeting and would need to be included in the minutes. We also note that Iowa Code section 21.3 requires minutes to be kept and that the minutes are “public records open to public inspection.” However, the statute does not designate how long minutes are to be retained and IPIB does not have statutory authority to enforce record retention. Rather, our jurisdiction is on whether a document is a public record subject to inspection or a confidential public record that is not subject to inspection.

BY DIRECTION AND VOTE OF THE BOARD

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Submitted by: W. Charles Smithson, IPIB Director